

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4950 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MAHEMOOD RAHEMAN @

MAHEMOODKHAN JUMMAGULKHAN

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner

Mr.SP DAVE, A.G.P. for Respondents No. 1, 2 & 3

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 10/09/97

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India the petitioner - detenu has brought under challenge the detention order dated 11th May 1997 rendered by respondent No.1 u/s. 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (Act No.16 of 1985) (for short 'the PASA Act').

2. The grounds on which the impugned order of detention has been passed appear at Annexure : B to the petition. They inter-alia indicate that the petitioner had been indulging in criminal and anti-social activities of assaulting innocent people, causing hurt to them and creating atmosphere of fear. The grounds of detention inter-alia show three registered cases respectively in Gaikwad Haveli and Karanj Police Stations, Ahmedabad as particularised below :

Sr. No.	CR No.	Under Sections	Remarks
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1.	Haveli Police 143,294(B)	Pending in Court	
	CR No.190/96	352 I.P.C.	

2.	Haveli Police 143,147,148	Pending in Court	
	CR No.004/97	149,294(B)	
		336 I.P.C.	

3.	Karanj Police 302,114,120(B)	Pending	
	CR No.062/97	IPC & Sec.135 investigation	
	(1) Bombay		
	Police Act.		

The Detaining Authority has also made reference to Gaikwad Haveli Police Station CR No.3135/97 and 105/96 in the grounds of detention.

3. It has been recited that the detenu's anti-social activity tends to obstruct maintenance of public order and in support of such conclusion statements of eight witnesses have been relied upon. They speak about the incidents dated 27.2.1997, 5.3.1997, 11.3.1997 and 14.3.1997 indicating threatening, beating and assaulting the concerned witnesses in public resulting in fear in the mind of people.

4. It is on the aforesaid incidents that the detaining authority has passed the impugned order of detention while also relying upon the aforesaid cases lodged against the petitioner. The petitioner has been branded as a 'dangerous person' within the meaning of Section 2(c) of the PASA Act.

5. The petitioner has challenged the impugned order of detention on number of grounds, inter-alia, on the ground as appearing in Paragraphs : 10 and 12 of the petition. It has been asserted there that the Sponsoring

Authority has not placed the most important and relevant material and vital documents, viz. Bail Application and Bail Order regarding CR No.105/96 and CR No.3135/97 which are shown to be the FIRs connected with the F.I.R. No. 190/96 and 62/97 by the Detaining Authority. The Bail Application and the Bail Order in respect of the said FIRs would be important and vital documents as the petitioner came to be arrested in connection with the said offences. It was the case of the petitioner that he was innocent and he was falsely implicated in the concerned offences. It is the case of the petitioner that relying on this contention on the part of the petitioner he was enlarged on bail with conditions. These vital documents having not been placed by the Sponsoring Authority before the Detaining Authority the impugned order of detention deserve to be quashed on the ground of non-application of mind and in the alternative as the copies of these documents have not been supplied to the petitioner the right of making effective representation as guaranteed by Article 22(5) of the Constitution of India would be violated. In reply the Detaining Authority has asserted that he had considered the F.I.R. in respect of CR No.105/96 which was lodged earlier in connection with the offences registered in CR No.190/96 and 3135/97 in connection with another CR No.62/97 registered at a later point of time. It has been asserted that the offences mentioned in CR No.190/96 are as a result of the earlier offences registered at CR No.105/96 and in the same way the offences registered at CR No.62/97 are as a result of earlier offences registered at CR No.3135/97 and, therefore, only the FIRs of earlier CRs noted above have been supplied to the detenu. Hence this ground would not be available to the petitioner.

6. I have heard the learned Advocate for the petitioner and the learned A.G.P. for the State. Ms.D.R. Kachhavah, learned Advocate appearing for the petitioner placed reliance upon a Bench decision of this Court in the case of Babu Ramchandra Mane V/s. The State of Gujarat and two others, rendered on 31st July/1st August, 1990 (Coram : S.B.Majmudar, J, as His Lordship then was, and J.N.Bhatt, J.) (per Bhatt, J.) in Special Criminal Application No.395 of 1990 which in turn has referred to a decision of the Apex Court in the case of M.Ahmedkutty V/s. Union of India, reported in 1990 (2) SCC 1. It has been observed that non-consideration and consequent non-supply of vital material would vitiate the subjective satisfaction of the detaining authority. In the case before the Division Bench Bail Applications and the orders of Bail passed below such bail applications

were not supplied and the challenge was on the ground of non-application of mind on the part of the detaining authority. Relying upon the aforesaid decision of the Honourable Supreme Court in M.Ahmedkutty's case (supra) the Bench has shown indulgence in accepting the contention of the petitioner there. In the present case also the detaining authority has relied upon the aforesaid two earlier FIRs. It would, therefore, be obvious that the Bail Applications and the bail orders in the said FIRs would be relevant documents required to be placed by the Sponsoring Authority before the detaining authority. That apart in the concluding para in the ground of detention the detaining authority has referred to all the offences set out in the opening part of the ground and has asserted that since the detenu was enlarged on bail in all the said offences there was a possibility of the detenu continuing his offending activity. In that view of the matter the Detaining Authority was conscious about the fact that the detenu was enlarged on bail in all the offences including the aforesaid two offences. It is an admitted position that the copies of bail application and the bail orders have not been supplied in so far as those two FIRs are concerned. Therefore, in any event valuable right of the detenu for making effective representation under Article 22(5) of the Constitution of India would stand violated. The result is that this petition would deserve to be allowed on that ground.

7. There are other grounds of challenge levelled against the impugned order of detention. However, in view of the fact that the petitioner would succeed on the ground of non-supply of copy of bail application and the bail order, it is not necessary to deal with the other grounds. Hence, following order is passed :

The impugned order of detention is hereby quashed and set aside. The petitioner - detenu - Mahemood Raheman @ Mahemoodkhan Jummagulkhan Pathan shall be forthwith set at liberty, if he is not required to be detained in any other case. Rule made absolute accordingly.

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